

87-20170

Supreme Court, U.S.

FILED

APR 25 1988

JOSEPH F. SPANGL JR.  
CLERK

No:

UNITED STATES SUPREME COURT

October term 1987

Otto Bintz

Petitioner

v.

Jeryl W. Riddick, Sr.

G. Davis Monola

James B. Oliver

Webster M. Chandler

Walter P. Conrad, Jr.

Peter M. Meredith

(City Officials)

Respondents

Petition for Writ of Certiorari  
to the US Court of Appeals for  
the fourth Circuit.

*Otto Bintz,*

Otto Bintz (pro se)

P. O. Box 11537

Norfolk, VA 23517

(804) 473-7104

12/19/87



Questions:

1. Do City Officials have an obligation to grant a building permit, when all rules have been complied with, or can they, with a process due only in form, arbitrarily deny a permit to anyone.
  
2. Can a Judge rule on the merits himself, when a Jury was asked for.

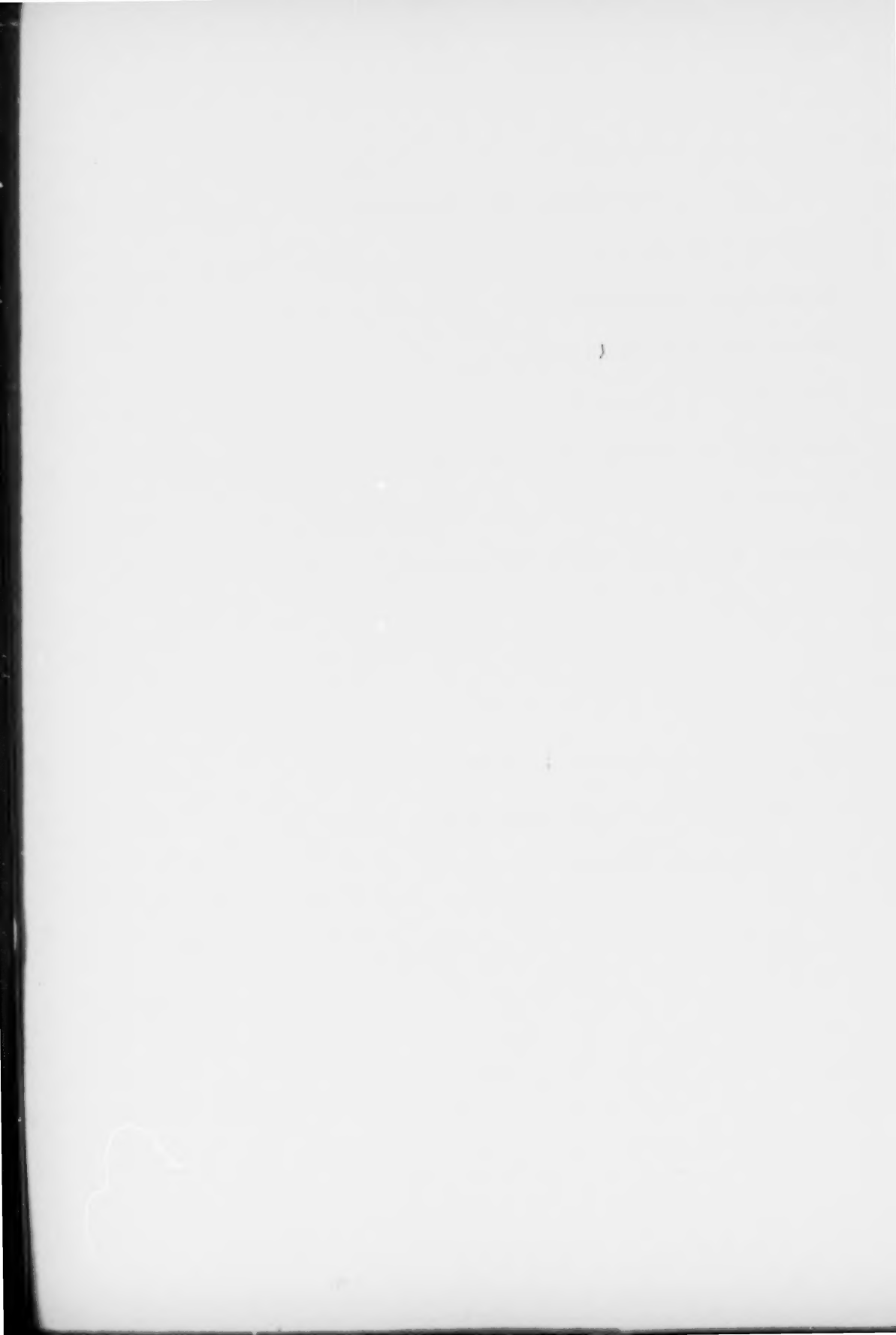


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## TABLE OF AUTHORITIES

1. US Constitution Amendment 5 and 14
2. 42 U.S.C. §1983



### The CASE

The violated law is: Nobody shall be denied the use of his property without due process of law under color of State Law.

Bintz owns a lot zoned duplex; handed in plans for a duplex. By the City's definition 5 persons count as one family and may occupy one unit. So, Bintz, designing his house for such a situation gave each of his two units 5 equal bedrooms. Since furthermore rooming houses have 3 to 9 units and the plan had only 2, the plan was indeed a duplex and nothing else. City Officials (Respondents), however, had other thoughts. They resented the floorplan. They never said it clearly, but apparently they wanted the customary arrangement with big bedroom and little bedrooms. But there was no rule requiring bedrooms to be unequal in size, they could make use of. Unable to stop this project with rules, they resorted to foul play. They stalled, withheld the customary procedure of saying what to change,





made an announcement: "Bintz applied for rooming house", which was a lie, and in the end said "no permit".

Higher Officials did furnish a formally correct due process by granting a hearing and listening politely, but it came to nothing. They simply voted "no", gave no reasons.

As a result, Bintz, a 52 year old single man cannot have a house to his liking. Damage has been done to him. Norfolk has many retired navymen and not enough women. Everybody living in couples simply cannot be done. There is a need for singles to live in small groups to overcome isolation and to have help around in heart attack situations. If the married folks can have any floorplan they want, why can't the singles?

Bintz claims land use denial outside the rules and ill will. Asked for \$190,000. in damages and a Jury Trial.



Decision: The Judge did not allow one. Analyzed the case himself. Said: The permit denial may have been arbitrary, but the hearing was fair. This is due process. The Appeals Judge concurred.

Request: Petitioner still would like to have a Jury Trial in the Eastern Virginia District Court.

Arguments:

1. Bintz had asked for a jury trial, but in the dismissal motion the Judge ruled on the merits himself.
2. As far as the hearing is concerned, the listening part was fair. What was wrong was the decision. Without looking at the rules they said "no" to a man who wanted a duplex in a duplex zone, was willing to make changes, and even pledged to rent out by apartments only and not by rooms.

*Otto Bintz*

Otto Bintz  
P. O. Box 11537  
Norfolk, VA 23517



## A P P E N D I X



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Otto Bintz                      Plaintiff  
v.  
Jeryl W. Riddick, ET AL.,  
                                 Defendants

CIVIL ACTION  
NO. 87-172-N

ORDER.

In order to establish a due process claim, plaintiff must show both that he had a constitutionally protected property interest in receiving the building permit and that the deprivation of such interest was accomplished without due process of law. See *Gaballah v. Johnson*, 629 F.2d 1191, 1202 (7th C, 1980). While it is not at all clear that plaintiff had a constitutionally protected property interest in receiving a building permit upon the plans he submitted, in deciding defendants motion to dismiss, we will assume that he had such an interest.

The issue then becomes whether the procedure followed in denying plaintiff's building permit application comported with due process.





We find it did. Even assuming, as plaintiff contends, that the initial denial of his application was arbitrary, the hearing conducted by the Board of Zoning Appeals served as an independent review of the building official's decision. The record before this Court contains a complete transcript of such hearing and after reviewing this transcript, we find that the hearing afforded plaintiff with a full and fair opportunity to have his claim reviewed.

Moreover, Va. Code 15.1-497 provides for circuit court review of decisions by the Board of Zoning Appeals. Board of Supervisors v. Board of Zoning Appeals. 225 Va. 235, 302 S.E. 2d 19 (1983). While plaintiff failed to take advantage of this review, we find that this procedure satisfies the requirement of due process. Accordingly, plaintiff's claim pursuant to 42 U.S.C. §1983 must be dismissed.

Therefore, the Court GRANTS defendant's



motion to dismiss and DISMISSES plaintiff's  
action with prejudice.      It so ordered.

(John Mackenzie)  
US District Judge

Norfolk, VA May 29, 1987.



US Court of Appeals  
for the fourth  
Circuit

Otto Bintz

Appellant

v.

87-1112

Jeryl W. Riddick, et al

Appellee

PER CURIAM:

A review of the record and the district court's opinion discloses that this appeal from the court's order denying relief under 42 U.S.C. 1983 is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgement below on the reasoning of the district court. Bintz v. Riddick, C/A No. 87-172-N (E.D.Va. May 29, 1987).

AFFIRMED

Before RUSSEL and SPROUSE, Circuit Judges,  
and BUTZNER, senior Circuit Judge. Decided:  
Jan. 7, 88.

(there was no signature)



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

NO. 87-1112

Filed  
Jan. 28/88

Otto Bintz

Appellant

v.

Jeryl W. Riddick, Sr., et al.

Appellees.

On Petition for Rehearing.

Upon consideration of the appellant's pro se petition for rehearing, IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Senior Judge Butzner, with the concurrence of Judge Russel and Judge Sprouse.

For the Court

JOHN M. GREACEN  
CLERK

(there was no signature, only a stamped name)